JUDGMENT OF THE COURT
18 June 2021*

(*Regulation (EU) 2017/1129 – Investor protection – Notion of an "offer of securities to the public" – Disclosure of information – Obligation to publish a prospectus – Exemptions*)

In Case E-10/20,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Board of Appeal of the Financial Market Authority (*Beschwerdekommission der Finanzmarktaufsicht*), in the case between

ADCADA Immobilien AG PCC in Konkurs

and

the Financial Market Authority (*Finanzmarktaufsicht*),

concerning the interpretation of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, in particular point (b) of Article 1(4) and point (d) of Article 2 thereof,

THE COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Per Christiansen and Bernd Hammermann, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

* Language of the request: German. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- ADCADA Immobilien AG PCC in Konkurs ("ADCADA"), represented by Dr Florian Scheiber, advocate;

- the Liechtenstein Government, represented by Dr Andrea Entner-Koch and Dr Claudia Bösch, acting as Agents;

- the Norwegian Government, represented by Simen Hammersvik, Kine Sverdrup Borge and Lotte Tvedt, acting as Agents;

- the German Government, represented by Johannes Möller and Dr David Klebs, acting as Agents;

- the EFTA Surveillance Authority ("ESA"), represented by Claire Simpson, Romina Schobel, Carsten Zatschler and Catherine Howdle, acting as Agents; and

- the European Commission ("the Commission"), represented by Tibor Scharf and Joan Rius Riu, acting as Agents;

having regard to the Report for the Hearing,

having heard oral argument of ADCADA, represented by Dr Florian Scheiber; the Liechtenstein Government, represented by Dr Andrea Entner-Koch and Dr Claudia Bösch; the Norwegian Government, represented by Simen Hammersvik and Lotte Tvedt; the German Government, represented by Johannes Möller; ESA, represented by Carsten Zatschler and Romina Schobel; and the Commission, represented by Joan Rius Riu and Tibor Scharf; at the remote hearing on 21 January 2021,

gives the following

Judgment

I Legal background

EEA law

1 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ 2017 L 168, p. 12) ("the Regulation") was incorporated into the Agreement on the European Economic Area ("the EEA Agreement" or "EEA") by Decision of the EEA Joint Committee No 84/2019 of 29 March 2019 (OJ 2019 L 235, p. 5), and is referred to at point 29bd of Annex IX (Financial services) to the EEA Agreement. Constitutional

requirements were indicated by Norway, Iceland and Liechtenstein. Those requirements were fulfilled by 28 June 2019 and the decision entered into force on 29 June 2019.

2 Recital 3 of the Regulation reads:

Disclosure of information in cases of offers of securities to the public or admission of securities to trading on a regulated market is vital to protect investors by removing asymmetries of information between them and issuers. Harmonising such disclosure allows for the establishment of a cross-border passport mechanism which facilitates the effective functioning of the internal market in a wide variety of securities.

3 Recital 7 of the Regulation reads:

The aim of this Regulation is to ensure investor protection and market efficiency, while enhancing the internal market for capital. The provision of information which, according to the nature of the issuer and of the securities, is necessary to enable investors to make an informed investment decision ensures, together with rules on the conduct of business, the protection of investors. Moreover, such information provides an effective means of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets. The appropriate way to make that information available is to publish a prospectus.

4 Recital 14 of the Regulation reads:

The mere admission of securities to trading on a MTF or the publication of bid and offer prices is not to be regarded in itself as an offer of securities to the public and is therefore not subject to the obligation to draw up a prospectus under this Regulation. A prospectus should only be required where those situations are accompanied by a communication constituting an 'offer of securities to the public' as defined in this Regulation.

5 Recital 15 of the Regulation reads:

Where an offer of securities is addressed exclusively to a restricted circle of investors who are not qualified investors, drawing up a prospectus represents a disproportionate burden in view of the small number of persons targeted by the offer, thus no prospectus should be required. That would apply for example in the case of an offer addressed to a limited number of relatives or personal acquaintances of the managers of a company.

6 Recital 22 of the Regulation reads:

Where securities are allocated without an element of individual choice on the part of the recipient, including allocations of securities where there is no right to repudiate

the allocation or where allocation is automatic following a decision by a court, such as an allocation of securities to existing creditors in the course of a judicial insolvency proceeding, such allocation should not qualify as an offer of securities to the public.

7 Article 1(1) and (4) of the Regulation, entitled "Subject matter, scope and exemptions", reads, in extract:

1. This Regulation lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a Member State.

...

4. The obligation to publish a prospectus set out in Article 3(1) shall not apply to any of the following types of offers of securities to the public:

(a) an offer of securities addressed solely to qualified investors;

(b) an offer of securities addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors;

(c) an offer of securities whose denomination per unit amounts to at least EUR 100 000;

(d) an offer of securities addressed to investors who acquire securities for a total consideration of at least EUR 100 000 per investor, for each separate offer;

...

8 Article 2 of the Regulation, entitled "Definitions", reads, in extract:

For the purposes of this Regulation, the following definitions apply:

...

(d) 'offer of securities to the public' means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries;

...

9 Article 3(1) of the Regulation, entitled "Obligation to publish a prospectus and exemption", reads:

> *Without prejudice to Article 1(4), securities shall only be offered to the public in the Union after prior publication of a prospectus in accordance with this Regulation.*

10 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ 2003 L 345, p. 64) ("Directive 2003/71/EC") was incorporated into Annex IX (Financial services) to the EEA Agreement by Decision of the EEA Joint Committee No 73/2004 of 8 June 2004 (OJ 2004 L 349, p. 30). Directive 2003/71/EC was repealed by the Regulation from 21 July 2019.

National law and practice

11 Article 9(1) of the Act of 10 May 2019 implementing Regulation (EU) 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (*Gesetz vom 10. Mai 2019 zur Durchführung der Verordnung (EU) 2017/1129 über den Prospekt, der beim öffentlichen Angebot von Wertpapieren oder bei deren Zulassung zum Handel an einem geregelten Markt zu veröffentlichen ist*; LR 954.2) ("the Implementing Act"), headed "Competent authority", reads:

> *The FMA is the competent authority for Liechtenstein in accordance with Article 31(1) of Regulation (EU) 2017/1129 and performs the duties and applies the powers assigned to a competent authority under Regulation (EU) 2017/1129 and this act.*

12 Article 10(2) of the Implementing Act reads, in extract:

> *2) The FMA is empowered in particular:*
>
> ...
>
> *f) to prohibit an offer of securities to the public or admission to trading on a regulated market where it finds that there has been an infringement of Regulation (EU) 2017/1129 or this act, or there are reasonable grounds for suspecting that there would be an infringement of these regulations;*
>
> ...
>
> *i) to make public the fact that an issuer, an offeror or a person applying for admission to trading on a regulated market is failing to comply with his/her obligations;*

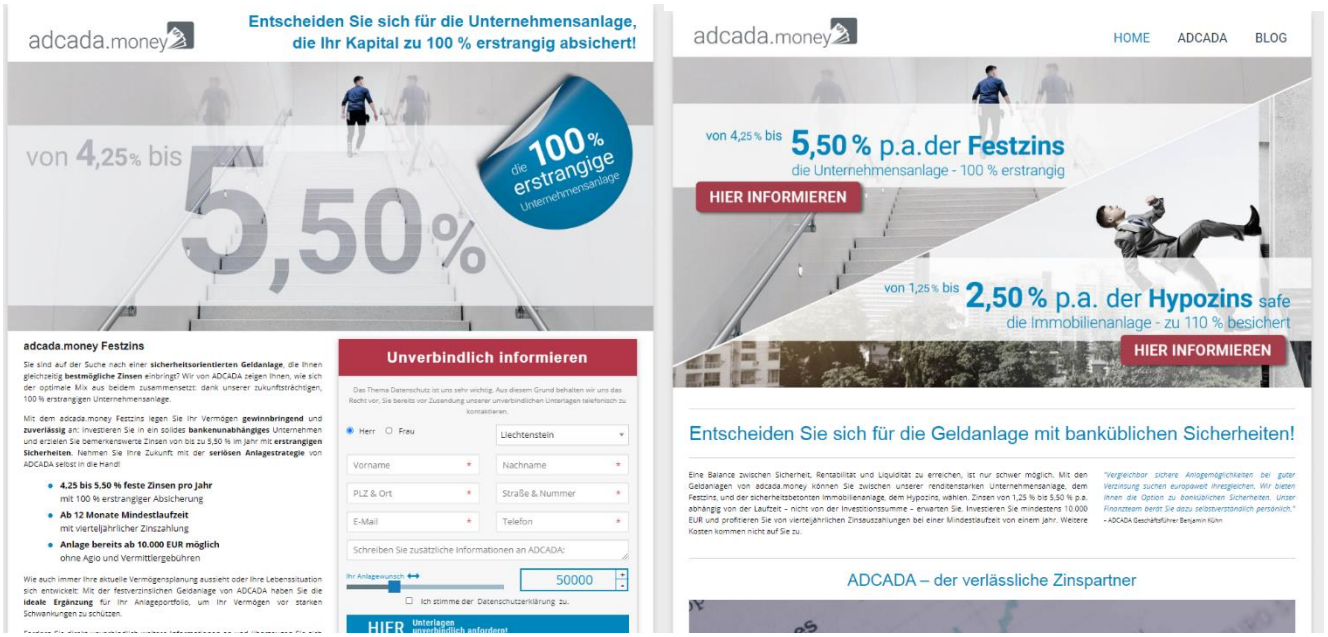
II Facts and procedure

13 The case before the Board of Appeal of the Financial Market Authority (*Beschwerdekommission der Finanzmarktaufsicht*) ("the Board of Appeal") concerns an appeal brought by ADCADA against a decision of the Financial Market Authority (*Finanzmarktaufsicht*) ("the FMA") of 3 June 2020. That decision deemed the "adcada.money fixed interest" bond issued in Liechtenstein by ADCADA to be offered to the public and prohibited it in the absence of a prospectus ("the contested decision").

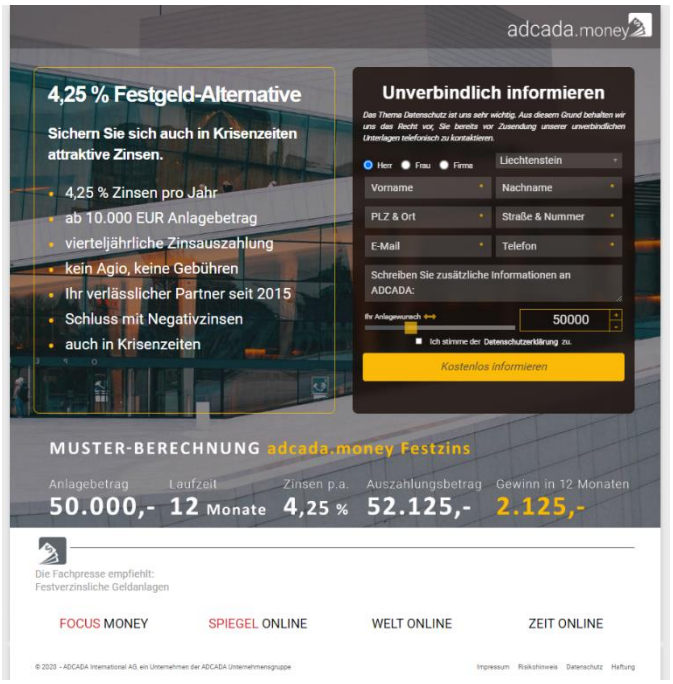
14 ADCADA is a public limited protected cell company governed by Liechtenstein law and has its registered office in Ruggell, Liechtenstein. It is the issuer of the "adcada.money fixed interest" (*adcada.money Festzins*) and "adcada.money mortgage interest" (*adcada.money Hypozins*) bonds.

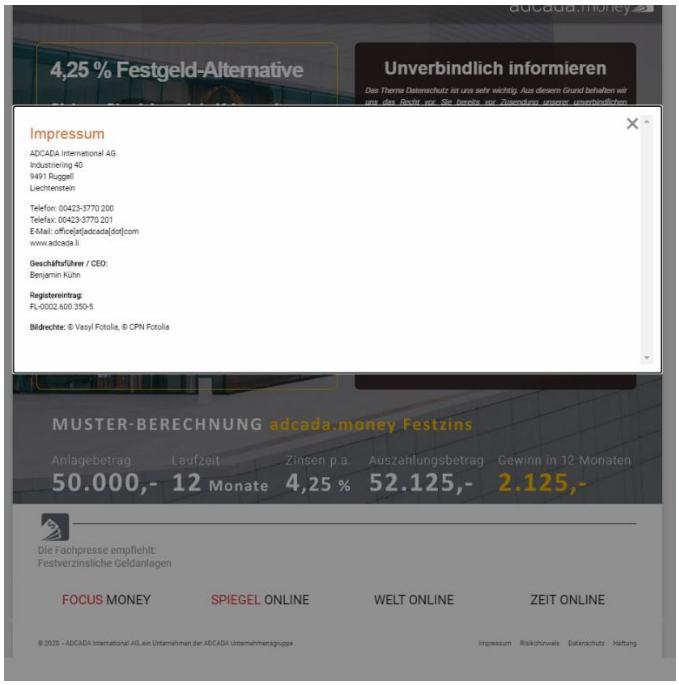
15 By letter of 7 January 2021, the Board of Appeal informed the Court about the initiation of insolvency proceedings against ADCADA by order of 4 December 2020 of the Court of Justice of the Principality of Liechtenstein (*Fürstliches Landgericht*). ADCADA's designation in the present proceedings was amended accordingly.

16 The offer "adcada.money fixed interest" was promoted on the website https://adcada.money/ as follows:



17 The offer "adcada.money fixed interest" was also promoted on the website https://die.investments/ as follows:





18 At the time of the contested decision, a prospectus for the offer to the public of the "adcada.money fixed interest" bond had not been approved by the FMA nor had any notification of a prospectus been recorded.

19 In the contested decision, the FMA found that there was an offer of a security to the public. The FMA considered that, in principle, a broad interpretation of the definition contained in point (d) of Article 2 of the Regulation was to be assumed, but that not every communication constituted an offer to the public. Rather, in the view of the FMA, an investor had to be enabled to make an investment decision. The FMA considered that that would be the case if an investor merely had to agree or was able to make a purchase offer to that effect on the basis of information in a communication, but that this also necessitated an actual purchase opportunity. A connection was therefore required between a promotional communication and a purchase opportunity. The FMA considered that a communication thus had to present sufficient information on the terms of the offer of the securities, that is, the principal conditions of the security. This would include at least the object of purchase, the price or price structure, the term, and the currency.

20 The FMA considered that the description of the "adcada.money fixed interest" bond on the website https://adcada.money mentioned the relevant information, in particular the minimum investment, the term and the interest rate, as follows:

100% top-tier business investment
4.25 to 5.50% annual fixed interest rate
minimum term from 12 months
quarterly interest payments
investment possible from EUR 10 000
no premium
no agency fees

21 In the contested decision, the FMA found that a contact point was also indicated. Thus, in the view of the FMA, the connection was established between the promotional communication and the purchase opportunity. The FMA considered that an investor would therefore be able to decide to purchase and to contact the issuer or sister or parent companies to process the transaction. Furthermore, the FMA considered that information on the "adcada.money fixed interest" bond was available without any restriction on the internet, in particular at adcada.money and die.investments, such that the offer for that bond was addressed to an unlimited number of possible investors, including in Liechtenstein. Therefore, the FMA found that the conditions for relying on the exception under point (b) of Article 1(4) of the Regulation were not met. An exception to the obligation to draw up a prospectus therefore did not apply, and a prospectus should have been drawn up. Consequently, the FMA concluded that the offer of the "adcada.money fixed interest" bond to the public had to be prohibited in Liechtenstein and the fact that an issuer was failing to comply with its obligations had to be made public.

22 ADCADA lodged an appeal against the contested decision with the Board of Appeal. In its appeal, ADCADA disputes the existence of an offer of securities to the public and, additionally, relies on the exemption provided for in point (b) of Article 1(4) of the Regulation.

23 Against this background, the Board of Appeal decided to stay the proceedings and refer questions to the Court for an advisory opinion. The request, dated 29 July 2020, was registered at the Court on 5 August 2020.

24 The following questions were referred to the Court:

1. *On the basis of what criteria is it to be assessed, whether in accordance with Article 2(d) of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, sufficient information on the terms of the offer and the securities to be offered has been issued, so as to enable an investor to decide to purchase or subscribe for those securities?*

2. *Is it significant for the assessment whether an offer to the public exists within the meaning of Article 2(d) of that regulation if the promotion includes the clearly*

visible direction 'HIER INFORMIEREN' ('GET FURTHER INFORMATION HERE') or 'Unverbindlich informieren' ('Get further information without obligation') and the full bond terms are not accessible online or otherwise generally available?

3. *Is it significant for the purposes of Article 1(4)(b) of that regulation if the offeror takes appropriate measures to ensure that the full terms of the bond are communicated to prospective buyers only upon request, whilst at the same time it is ensured that the communication is made only to a maximum of 149 natural or legal persons per Member State, which are not qualified investors?*

4. *Is it significant for the purposes of Article 1(4)(b) of that regulation that the offer is disseminated in a Member State through various media? If so, under what conditions is the offer presented in various media to be regarded as a consolidated offer of the same security to the public and under what conditions is there a new offer? It is possible to fall below the number of 150 natural or legal persons per Member State by dividing the offer across different media?*

25 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure, and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

III Answer of the Court

The first question

26 By its first question, the referring body asks, in essence, on the basis of which criteria must it be assessed, in accordance with point (d) of Article 2 of the Regulation, whether sufficient information on the terms of the offer and the securities to be offered has been issued, so as to enable an investor to decide to purchase or subscribe for those securities.

27 The Regulation lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within an EEA State, as set out in Article 1(1) of that regulation. It follows from Article 3(1) of the Regulation that securities shall only be offered to the public in the EEA after prior publication of a prospectus in accordance with the Regulation.

28 An "offer of securities to the public" is defined in point (d) of Article 2 of the Regulation as meaning a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries.

29 It is clear from the wording of this definition that the notion of an "offer of securities to the public" under the Regulation is broadly defined (compare the judgment in *Almer Beheer and Daedalus Holding*, C-441/12, EU:C:2014:2226, paragraph 28).

30 The Court recalls that the aim of the Regulation is to ensure investor protection and market efficiency, while enhancing the internal market for capital, as stated in recitals 3, 4 and 7 of the Regulation (compare the judgment in *Almer Beheer and Daedalus Holding*, cited above, paragraph 31). Accordingly, the protection of investors and the proper functioning and development of markets form the fundamental core of the objectives pursued by the Regulation. In view of those objectives, the publication of a prospectus is intended, first, to enable investors to assess the risks linked to the offer of securities to the public or the admission of those securities to trading, so as to enable them to make an informed decision, and, second, to ensure that the proper functioning of the markets concerned is not hindered by irregularities (compare the judgment in *Almer Beheer and Daedalus Holding*, cited above, paragraph 33).

31 The publication of a prospectus prior to an offer of securities to the public plays a crucial role in the protection of investors, since that document provides investors with full and precise information on the issuer, enabling them, in principle, to evaluate the risks of the transaction (compare the judgment in *Almer Beheer and Daedalus Holding*, cited above, paragraph 38).

32 It is in the light of these objectives that the definition of an "offer of securities to the public" contained in point (d) of Article 2 must be read. These objectives reinforce a broad understanding of the wording of that provision. A narrow interpretation of the notion of an "offer of securities to the public", which would restrict the obligation to draw up a prospectus in accordance with the Regulation, would run counter to the Regulation's objectives.

33 The definition of an "offer of securities to the public" contains two elements. There must be a communication to persons in any form and by any means and this communication must present sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This second element entails two implications. First, there must be a minimum amount of information, which must be sufficient for the purposes of point (d) of Article 2, in order to constitute an "offer of securities to the public". That provision identifies that this minimum information must relate to the terms of the offer and the securities to be offered. The interpretation of what constitutes minimum information in this respect must have regard to the objectives of the Regulation. Second, as indicated by recital 22 of the Regulation, there must be an element of individual choice on the part of the investor, as the information must 'enable an investor to decide'.

34 It follows from a systematic interpretation of the Regulation that the minimum information required in order to be sufficient for the purposes of point (d) of Article 2 is necessarily less than that required to be contained in a prospectus drawn up according to the Regulation. This is the case as it is an offer of securities to the public that triggers the obligation set out in Article 3(1) that a prospectus must have been published prior to such an offer. Otherwise, the designation of the Regulation of this process as two distinct procedural steps would be redundant.

35 As pointed out by the Norwegian Government and ESA, the preparatory works of Directive 2003/71/EC, from which the definition contained in point (d) of Article 2 of the Regulation is derived, indicate that the definition was not intended to necessitate that the extent of the minimum information required is enough that, if accepted, it would give rise to a contract.

36 As to what constitutes minimum information, recital 14 of the Regulation states that the mere admission of securities to trading on a multilateral trading facility or the publication of bid and offer prices is not to be regarded in itself as an offer of securities to the public. It is therefore not subject to the obligation to draw up a prospectus under the Regulation. It is further stated in that recital that a prospectus should only be required where those situations are accompanied by a communication constituting an "offer of securities to the public". Thus, the mere publication of bid and offer prices is not necessarily sufficient information to constitute an "offer of securities to the public". However, the specific circumstances of such a publication must also be taken into account for the purposes of the assessment. The inclusion of further information, in addition to the mere publication of bid and offer prices, may lead to a finding that there is an "offer of securities to the public" within the meaning of point (d) of Article 2.

37 However, as noted by the Norwegian Government, ESA and the Commission, an assessment of what constitutes "sufficient information" for the purposes of point (d) of Article 2 of the Regulation will primarily depend on the facts and circumstances of each individual case.

38 According to the request, the main proceedings concern promotional messages for bonds that were published on the internet in a manner freely accessible to anyone, which presented information on the minimum investment, the possible range of interest, the minimum term of investment, frequency of interest payments, and relevant fees.

39 Promotional messages, such as those at issue in the main proceedings, must be considered to constitute a "communication to persons in any form and by any means". The extent of the information described in the request for an advisory opinion must be considered as presenting sufficient information for the purposes of point (d) of Article 2 of the Regulation so as to enable an investor to decide to purchase or subscribe for those securities. In those circumstances, subject to the assessment which the referring body

must carry out in accordance with the criteria set out in that provision, such promotional messages must be considered an "offer of securities to the public" within the meaning of the Regulation.

40 Accordingly, the answer to the first question must be that whether sufficient information is presented on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase and subscribe for those securities in accordance with point (d) of Article 2 of the Regulation, must be assessed on a case-by-case basis. In circumstances such as those of the main proceedings, subject to verification by the referring body, there is an "offer of securities to the public" within the meaning of point (d) of Article 2 of the Regulation.

The second question

41 By its second question, the referring body asks, in essence, whether it is significant for the assessment of whether an offer to the public exists within the meaning of point (d) of Article 2 of the Regulation that the promotional message includes certain clearly visible indications stating that further information may be obtained elsewhere, and the full bond terms are not accessible online or otherwise generally available.

42 The inclusion in a promotional message of statements such as "get further information here" or "get further information without obligation" may, in principle, be relevant for the assessment of whether there is an offer of securities to the public. However, if a communication already presents sufficient information for the purposes of point (d) of Article 2 of the Regulation, the inclusion of such statements will not alter its qualification as an "offer of securities to the public". The fact that the full bond terms are not accessible online or otherwise generally available cannot alter a qualification of a communication as an "offer of securities to the public" if it already presents sufficient information for the purposes of point (d) of Article 2.

43 Accordingly, the answer to the second question must be that it may be relevant to an assessment of whether there is an "offer of securities to the public" within the meaning of point (d) of Article 2 of the Regulation that a communication includes certain clearly visible indications stating that further information may be obtained elsewhere, and the full bond terms are not accessible online or otherwise generally available. However, if a communication already presents sufficient information for the purposes of point (d) of Article 2, the inclusion of such statements or the fact that the full bond terms are not accessible online or otherwise generally available will not be capable of altering its qualification as an "offer of securities to the public".

The third and fourth questions

44 By its third and fourth questions, the referring body asks whether it is significant for the purposes of point (b) of Article 1(4) of the Regulation if the offeror takes measures to communicate the full terms of the bond to prospective buyers only upon request, whilst ensuring that the communication is made only to a maximum of 149 natural or legal persons per EEA State, which are not qualified investors, and that the offer is disseminated in an EEA State through various media.

45 It follows from point (b) of Article 1(4) of the Regulation that the obligation to publish a prospectus set out in Article 3(1) shall not apply to an offer of securities addressed to fewer than 150 natural or legal persons per EEA State, other than qualified investors.

46 The rationale underpinning this exemption is reflected in recital 15 of the Regulation, which provides that if an offer of securities is addressed exclusively to a restricted circle of investors who are not qualified investors, drawing up a prospectus represents a disproportionate burden, in which case no prospectus should be required. As an example of such a situation, recital 15 mentions the case of an offer addressed to a limited number of relatives or personal acquaintances of the managers of a company.

47 It follows from well-established case law that provisions of a legal act incorporated into the EEA Agreement which derogate from a general principle established by that act must be interpreted strictly. Exceptions are to be interpreted strictly so that general rules are not negated.

48 Accordingly, point (b) of Article 1(4) of the Regulation, which constitutes an exception from the general obligation under Article 3(1) to publish a prospectus prior to the offer of securities to the public, must be interpreted strictly.

49 It follows from the wording of point (b) of Article 1(4) of the Regulation that in order to rely on that exemption an offer of securities must, as pointed out by the Commission, actually be addressed to fewer than 150 natural or legal persons per EEA State, other than qualified investors. Thus, where an offer of securities is communicated to prospective buyers only upon request, whilst at the same time it is ensured that the communication is made only to a maximum of 149 natural or legal persons per EEA State, which are not qualified investors, that is, in principle, significant for the purposes of point (b) of Article 1(4).

50 However, in circumstances where an offer of securities to the public has been published and promoted on the internet in a manner freely accessible to anyone, such an offer must be considered as being addressed to an unlimited number of persons for the purposes of point (b) of Article 1(4) of the Regulation. Accordingly, in such circumstances, it is not possible to rely on the exemption provided for in that provision. That conclusion is

further supported by the fact that the considerations set out in recital 15 of the Regulation are not applicable to such a situation.

51 As to the issue of whether it is significant for the purposes of point (b) of Article 1(4) of the Regulation that an offer is disseminated in an EEA State in various media, an interpretation to that effect of that provision must be rejected. Not only would that interpretation render meaningless the specific limit set out in point (b) of Article 1(4) but it would also seriously undermine the system established by the Regulation and facilitate the circumvention of the obligations laid down by it. Such an interpretation of point (b) of Article 1(4) would therefore not be in accordance with the objectives pursued by the Regulation, such as investor protection. Accordingly, the limit set out in point (b) of Article 1(4) cannot be circumvented by disseminating the offer in an EEA State through various media.

52 In the light of the foregoing, the answer to the third and fourth questions must be that it is, in principle, significant for the purposes of point (b) of Article 1(4) of the Regulation that an offer of securities is communicated to prospective buyers only upon request, whilst at the same time it is ensured that the communication is made only to a maximum of 149 natural or legal persons per EEA State, which are not qualified investors. However, in order to rely on the exemption in point (b) of Article 1(4) of the Regulation, the offer of securities must actually be addressed to fewer than 150 natural or legal persons per EEA State, other than qualified investors. The limit set out in that provision cannot be circumvented by disseminating the offer in an EEA State through various media.

IV Costs

53 The costs incurred by the Liechtenstein Government, the Norwegian Government, the German Government, ESA, and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before the referring body, any decision on costs for the parties to those proceedings is a matter for that body.

On those grounds,

THE COURT

in answer to the questions referred to it by the Board of Appeal of the Financial Market Authority hereby gives the following Advisory Opinion:

1. **Whether sufficient information is presented on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase and subscribe for those securities in accordance with point (d) of Article 2 of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, must be assessed on a case-by-case basis.**

   In circumstances such as those in the main proceedings, subject to verification by the referring body, there is an "offer of securities to the public" within the meaning of point (d) of Article 2 of Regulation (EU) 2017/1129.

2. **It may be relevant to an assessment of whether there is an "offer of securities to the public" within the meaning of point (d) of Article 2 of Regulation (EU) 2017/1129 that a communication includes certain clearly visible indications stating that further information may be obtained elsewhere, and the full bond terms are not accessible online or otherwise generally available. However, if a communication already presents sufficient information for the purposes of point (d) of Article 2, the inclusion of such statements or the fact that the full bond terms are not accessible online or otherwise generally available will not be capable of altering its qualification as an "offer of securities to the public".**

3. **It is, in principle, significant for the purposes of point (b) of Article 1(4) of Regulation (EU) 2017/1129 that an offer of securities is communicated to prospective buyers only upon request, whilst at the same time it is ensured that the communication is made only to a maximum of 149 natural or legal persons per EEA State, which are not qualified investors. However, in order to rely on the exemption in point (b) of Article 1(4), the offer of securities must actually be addressed to fewer than 150 natural or legal persons per EEA State, other than qualified investors. The limit set out in that provision cannot be circumvented by disseminating the offer in an EEA State through various media.**

Páll Hreinsson Per Christiansen Bernd Hammermann

Delivered in open court in Luxembourg on 18 June 2021.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President